Filed 1/9/19 P. v. Hall CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CANDEE JEAN HALL, Defendant and Appellant.	F075679 (Super. Ct. No. BF165323A) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush and John W. Lua, Judges.†

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Julie A. Hokans, Deputy Attorney General, for Plaintiff and Respondent.

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† Judge Bush ruled on the *Pitchess* motion; Judge Lua presided over the jury trial.

INTRODUCTION

At the conclusion of a jury trial, Candee Jean Hall was found guilty of transportation for sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a); count 1),[1] possession for sale of methamphetamine, a controlled substance (§ 11378; count 2), and misdemeanor possession of drug paraphernalia (§ 11364; count 3). With regard to counts 1 and 2, an enhancement (§ 11370.2, subd. (c)) was alleged; at a bifurcated hearing, the trial court found true that Hall had a prior felony drug conviction.

The trial court sentenced Hall to a term of three years in county jail on count 1 plus three years for the prior drug conviction enhancement. The court ordered the first three years to be served in custody and the remaining sentence to be served on mandatory supervision. The court imposed a concurrent term of two years on count 2 which was stayed pursuant to Penal Code section 654. The court imposed various fines, fees and assessments on counts 1 and 2, including a $50 criminal laboratory fee pursuant to section 11372.5, plus a $155 penalty assessment, and a $100 drug program fee pursuant to section 11372.7, plus a $310 penalty assessment.

Hall filed a pretrial motion to review the personnel file of Bakersfield Police Officer Santos Luevano. After in camera review, the trial court granted Hall's request for discovery. Pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) and *People v. Mooc* (2001) 26 Cal.4th 1216 (*Mooc*), Hall seeks independent review by this court of information in Officer Luevano's personnel file. Hall contends penalty assessments pursuant to sections 11372.5 and 11372.7 were improperly imposed. Hall further contends, and the People concede, that her prior felony drug conviction is now a misdemeanor and cannot be used to enhance her sentence. We find no further discoverable information in the officer's personnel file and no error in the court's

[1] Unless otherwise designated, statutory references are to the Health and Safety Code.

imposition of penalty assessments.[2] We agree with the parties that Hall's prior felony drug conviction enhancement must be stricken.

PITCHESS REVIEW

The statutory scheme for *Pitchess* motions is set forth in Evidence Code sections 1043 through 1047 and Penal Code sections 832.5, 832.7 and 832.8. When a defendant seeks discovery from a peace officer's personnel records, he or she must file a written motion that satisfies certain prerequisites and makes a preliminary showing of good cause. If the trial court determines that good cause has been established, the custodian of records brings to court all documents that are " 'potentially relevant' to the defendant's motion." (*Mooc, supra,* 26 Cal.4th at p. 1226.) The trial court examines these documents in camera and, subject to certain limitations, discloses to the defendant " 'such information [that] is relevant to the subject matter involved in the pending litigation.' " (*Ibid*.) The ruling on a *Pitchess* motion is reviewed for an abuse of discretion. (*People v. Hughes* (2002) 27 Cal.4th 287, 330 (*Hughes*).)

The record in this case is adequate to permit meaningful appellate review. It contains a transcript of the in camera *Pitchess* hearing on January 19, 2017, an order from the trial court setting forth its procedures and practices in reviewing police records, and a copy of the police records the trial court examined. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285 (*Prince*); *Hughes, supra,* 27 Cal.4th at p. 330.) Having independently reviewed the transcript of the *Pitchess* proceeding and the records the court examined and submitted under seal, we conclude the court followed the procedure set forth in *Mooc* and that no documents were erroneously withheld. We uphold the trial court's ruling on the *Pitchess* motion. (*Prince, supra,* 40 Cal.4th at p. 1286; *Hughes, supra,* 27 Cal.4th at p. 330.)

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[2] Because the facts underlying Hall's conviction are irrelevant to the issues she has raised on appeal, we do not recount them.

PENALTY ASSESSMENTS

Hall contends the trial court erred when it imposed a penalty assessment of $155 to the $50 criminal laboratory fee assessed pursuant to section 11372.5, subdivision (a)[3] and when it imposed a penalty assessment of $310 to the $100 drug program fee pursuant to section 11372.7, subdivision (a).[4] Hall argues that because these statutes refer to "fines" she cannot be charged penalty assessments on either fee because a fine is not a "penalty." We conclude that the laboratory and program fees and the assessments constitute punishment.

Relying on *People v. Watts* (2016) 2 Cal.App.5th 223 (*Watts*), Hall argues the penalty assessments attached to the laboratory and program fees must be stricken. Hall recognizes a split in authority, urging us to adopt the reasoning of *Watts, supra*, 2 Cal.App.5th 223 and depart from our decision in *People v. Sierra* (1995) 37 Cal.App.4th 1690 (*Sierra*).

Penalty assessments apply to any "fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses" and increase such fines, penalties, or forfeitures by a specified amount. (E.g., Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1).) In *Sierra, supra,* 37 Cal.App.4th at page 1696, we found the program fee (§ 11372.7, subd. (a)) is a fine or penalty to which penalty assessments are applicable. In *People v. Martinez* (1998) 65 Cal.App.4th 1511 (*Martinez*), the court

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[3] In relevant part, section 11372.5, subdivision (a) provides that every person convicted of an enumerated drug offense, including sections 11378 and 11379, subdivision (a): "shall pay a criminal laboratory analysis fee in the amount of fifty dollars ($50) for each separate offense. The court shall increase the total *fine* necessary to include this increment." (Italics added.)

[4] In relevant part, section 11372.7, subdivision (a) provides that every person convicted pursuant to this chapter: "shall pay a drug program fee in an amount not to exceed one hundred fifty dollars ($150) for each separate offense. The court shall increase the total *fine*, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law." (Italics added.)

applied our reasoning to the laboratory fee specified in section 11372.5, subdivision (a): "Under the reasoning of *Sierra*[, *supra*, 37 Cal.App.4th 1690], we conclude Health and Safety Code section 11372.5, defines the [laboratory] fee as an increase to the total fine and therefore is subject to penalty assessments under [Penal Code] section 1464 and Government Code section 76000." (*Martinez*, *supra*, 65 Cal.App.4th at p. 1522.) Other courts have reached the opposite conclusion. *Watts*, which itself noted that its holding was "contrary to the weight of authority," held that the laboratory fee "is not subject to penalty assessments." (*Watts*, *supra*, 2 Cal.App.5th at pp. 226, 229-232; see *People v. Vega* (2005) 130 Cal.App.4th 183, 193-195 (*Vega*) [laboratory fee is not punishment for purposes of Pen. Code, § 182, subd. (a)].)

Recently, in *People v. Ruiz* (2018) 4 Cal.5th 1100, our Supreme Court held that the laboratory and drug program fees mandated by the Health and Safety Code were punishment for purposes of the conspiracy statute (Pen. Code, § 182). (*Ruiz*, at pp. 1118-1121.) Although the court declined to decide whether these fees were subject to penalty assessments (*id*. at p. 1122), it disapproved of *Watts* and *Vega* to the extent they were inconsistent with the court's holding. (*Id*. at p. 1122, fn. 8.) In accord with *Martinez*, we conclude the laboratory fee is a fine or penalty subject to penalty assessments and we apply our holding in *Sierra* that the program fee is also subject to penalty assessments.

SENATE BILL NO. 180

On October 11, 2017, the Governor signed Senate Bill No. 180 (Stats. 2017, ch. 677, § 1) providing that the three-year enhancement of section 11370.2, subdivision (c) for a prior drug conviction applies only where the defendant has a prior conviction for using a minor as an agent in the commission of a drug offense within the meaning of section 11380. From the probation officer's report, Hall does not appear to have a prior drug conviction involving use of a minor. The prior conviction alleged in the information and found true by the trial court was for a violation of section 11378. This legislation was effective on January 1, 2018. The parties agree that although the

legislation was effective after the date of Hall's sentence, it should apply to her retroactively.

In light of recent California Supreme Court decisions retroactively applying newly enacted criminal statutes ameliorating a defendant's punishment to cases not yet final, we agree with the parties that the trial court must strike Hall's enhancement for a prior drug conviction (§ 11370.2) and reduce her sentence accordingly. (See *People v. Buycks* (2018) 5 Cal.5th 857, 876-884 [initiative reducing prior felony conviction to misdemeanor]; *People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 307-313 [initiative requiring minors to first be found unfit to be adjudicated in juvenile court before being tried as adults].)

DISPOSITION

The case is remanded for the trial court to strike Hall's Health and Safety Code section 11370.2 enhancement and the accompanying sentence. The judgment is otherwise affirmed.

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SNAUFFER, J.

WE CONCUR:

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DETJEN, Acting P.J.

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FRANSON, J.